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Response to Rule 17 Letter – Disaggregation of Highways NSIP and Commercial and Business Development

JUNE 2026

The East Midlands Gateway Phase 2
and Highway Order 202X and The East Midlands Gateway
Rail Freight and Highway (Amendment) Order 202X

The East Midlands Gateway Phase 2 and Highway Order 202X

RESPONSE TO RULE 17 LETTER – DISAGGREGATION OF HIGHWAYS NSIP AND COMMERCIAL AND BUSINESS DEVELOPMENT (DOCUMENT DCO 7.19)

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Applicants' response to ExP Rule 17 letter on disaggregation of the business and commercial development and highways NSIP

Introduction

1. This note addresses the question raised by the Examining Panel ("ExP") as to whether the "split approach" under sections 104 and 105 of the Planning Act 2008 ("PA2008") can be lawfully applied given that the Environmental Statement ("ES") does not disaggregate the assessment of the highways NSIP and the business and commercial development. The Applicants' position is that disaggregation of the ES is neither required nor appropriate and that, in any event, the outcome of the determination would inevitably be the same whether determined under section 104 or 105.
2. The ExP subsequently clarified in its letter dated 23 June 2026 [PD-025] that its original request for information to disaggregate the effects of the proposed development dated 2 June 2026 [PD-021], reflects the direction from the Secretaries of State for Transport, Housing, Communities and Local Government to consider "*matters in relation to the business and commercial component of the EMG2 application in a discrete part or section of the report*".
3. The letter from the Secretaries of State dated 22 December 2025 [PD-007D] confirmed the co-joining of the examination procedures for the DCO Application and the MCO Application. The letter explained that the Secretary of State for Transport will be the sole decision maker as a result of the "*significance of the transport element within the proposals and the strategic nature of the associated infrastructure*". The letter proceeds to clarify that the Secretary of State for MHCLG will be consulted on the recommendations made by the ExP in respect of the business and commercial component of the EMG2 application. The purpose of that consultation "*will be to ensure the decision on the business and commercial component aligns with government policy as the Secretary of State is best placed to advise on this*". It is for that reason, that the Secretaries of State asked the ExP to consider matters relating to the business and commercial component in discrete part or section of their report.
4. Against that background, it is clear the request from the Secretaries of State was not directed at a wider exercise of disaggregating the assessment within the Environmental Statement. Rather, it was focused on facilitating ease of review by the Secretary of State for MCHLG to ensure the business and commercial component aligns with government policy.
5. The Applicants address both matters below.

Disaggregation of the ES

Two Distinct Issues

6. As previously indicated, the Applicants invite the ExP to recognise that there are two separate issues in play:
 - (a) The first relates to the obligations arising under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("EIA Regulations"); and
 - (b) The second concerns the consenting mechanism for the various parts of the DCO application under the PA2008.
7. These issues must not be conflated. The EIA process governs how environmental effects are identified and assessed. The consenting mechanism governs the framework within which the Secretary of State decides whether to grant development consent. As explained below, there is no requirement under either regime for the ES to be disaggregated.

Disaggregation of the ES is Not Required

8. Environmental Impact Assessment is a process which requires an applicant to prepare an ES that identifies, describes, and assesses the likely significant effects of the project on the environment. The EIA Regulations refer to the "development" and the EIA Directive refers to the "Project", but there is no material difference between those terms (*R (Wingfield) v Canterbury City Council* 2019] EWHC 1975 (Admin); *Raeshaw Farms Ltd v Scottish Ministers* [2026] CSIH 10).

9. The courts have been astute to detect the device of "salami slicing" — where a project is split into applications for smaller component parts that fall below EIA thresholds and thereby avoid the requirement to carry out an EIA. Caselaw accordingly emphasises the importance of identifying and assessing the EIA project as a whole (*Raeshaw Farms Ltd v Scottish Ministers* [2026] CSIH10).
10. It is important to remember that EIA is not supposed to be an obstacle course for decision-makers to trip over. It is meant to facilitate decision-making, not to hamper or impede it (*Boswell v Secretary of State for Energy and Net Zero* [2025] EWCA Civ 669). Its purpose is to ensure that any decision to grant consent is taken with full knowledge of the environmental consequences.
11. It is acknowledged that Prologis has submitted that the ES is "inadequate" because it does not disaggregate its analysis so as to allow the ExP and the Secretary of State to apply the different statutory tests to the relevant parts of the DCO scheme. The Applicants do not accept that submission. The obligation under Regulation 21 of the EIA Regulations is for the Secretary of State to examine the environmental information, reach a reasoned conclusion on the significant effects of the development on the environment, and integrate that conclusion into the decision. Those obligations apply irrespective of whether the application is determined under s.104 or s.105 and require the Secretary of State to take account of all significant environmental effects of the Project as a whole.

Disaggregation Would Be Artificial and Inappropriate

12. In light of the inter-relationship between the various parts of the DCO Scheme, all elements have been assessed as a single project in the ES. There has been no suggestion from any party that it was wrong to adopt that approach to environmental assessment.
13. The NSIP highway works (and their associated development) are necessary to mitigate the effects of the commercial and business development such that one will not come forward without the other. In those circumstances, it would be wholly artificial to seek to separate out the impacts of one from the other. The effects of the NSIP works will not arise without the commercial and business development and vice versa. To give an example, it would be illogical to assess the environmental impacts of the highway NSIP works alone without taking account of the traffic flows (and their associated environmental effects) generated by the commercial and business development. Equally, it would be illogical and artificial to consider the impacts of the commercial and business development on the road network without taking account of the highway NSIP works which are necessary to mitigate its impacts.
14. Prologis has drawn attention to Chapter 19 of the ES (climate change) as illustrating that the ES assesses the DCO application as a whole without distinguishing between the highway NSIP and the business and commercial development. Far from being a deficiency, this reflects the reality that the scheme is a single integrated project. The highway works exist to serve the commercial and business development; the commercial and business development depends upon the highway works. Any attempt to attribute discrete environmental effects to one part or the other would involve an exercise of arbitrary allocation that would be more likely to mislead the decision-maker than to inform them.

The Consenting Mechanism Does Not Require a Disaggregated ES

15. Under s.104 PA2008, where a national policy statement has effect, the Secretary of State must have regard to that NPS, any Local Impact Report, any prescribed matters, and any other matters which the Secretary of State considers important and relevant. The Secretary of State must decide the application in accordance with the relevant NPS except to the extent provided for in sub-sections (4)–(8). Under s.104, need is taken to be established by national policy and there is a presumption in favour of granting consent for development that complies with the relevant NPS (NNNPS para 4.2; *EFW Group Ltd v Secretary of State for Business, Energy and Industrial Strategy* [2021] EWHC 2697 (Admin) at [38]). The highway works described in Part 2 of Schedule 1 to the dDCO and its associated development (Work 16), together with the MCO application, benefit from that presumption.
16. Where no NPS has effect, s.105 applies and the Secretary of State must have regard to any Local Impact Report, any prescribed matters, and any other matters that the Secretary of State thinks are

important and relevant. The business and commercial development and its associated development fall to be determined under s.105. However, the NNNPS will be an important and relevant consideration under s.105 (*R (Gate) v SST* [2013] EWHC 2937 (Admin); *EFW Group Ltd v Secretary of State for Business, Energy and Industrial Strategy* [2021] EWHC 2697 (Admin)).

17. The different consenting routes for the discrete aspects of the development do not affect the EIA process. That requires all significant effects of the Project as a whole to be taken into account. In practice, this means the ExP's recommendation report will need to consider all benefits and adverse impacts of the Project as a whole. When it comes to the overall planning balance: for the highways works and Work 16 and the MCO, the ExP's report will acknowledge that need is established by policy and take account of the presumption in favour of development that complies with the NNNPS; for the business and commercial development and its associated development, it will not add in that presumption. The separate consideration of the business and commercial development in the planning balance section of the report, taking account of the matters specified in section 105 PA2008 will satisfy request from the Secretary of State for the ExP to consider matters relating to the business and commercial component in discrete part or section of their report and enable the Secretary of State for MHCLG to advise on whether that aspect of the proposed development aligns with government policy.

The Outcome Would Be the Same — It Is the Same Project

18. Prologis has submitted that without the benefit of the s.104 presumption, the planning balance "may tip the other way" when the s.105 elements are considered on their own merits. That submission fails to grapple with the fundamental reality that the highway works and the commercial and business development are component parts of a single integrated project.

19. Even if the ES were disaggregated — which is neither required nor appropriate — it would produce the same outcome. This is because the EIA framework itself would require the supposedly "disaggregated" assessments to take account of the very elements that have been separated out, for the following reasons:

(a) If Part 2 (the highways NSIP) were assessed in isolation under s.104, the direct effects of the highway works would be identified — but the commercial and business development would necessarily fall to be considered as giving rise to indirect effects of those works, since the highway works exist to serve and facilitate that development. The traffic flows, employment, and economic activity generated by the commercial development are the very reason the highway works are required. The benefits of the highway works, including the significant improvements to M1 Junction 24 and the A453, cannot properly be understood without reference to the indirect effects arising from the development they are designed to facilitate.

(b) If Part 1 (the business and commercial development) were assessed in isolation under s.105, the direct effects of the commercial development would be identified — but the highway works would necessarily fall to be considered as a cumulative effect, since both elements form part of the same project and will be delivered together on the same site and in the same timeframe. The EIA Regulations require cumulative effects to be assessed, and it would be impossible to exclude from that cumulative assessment the highway works upon which the commercial development depends for access and mitigation of its transport impacts. The NNNPS would itself be an important and relevant consideration.

(c) In each case, whether framed as indirect effects or cumulative effects, the ExP would be required to consider the same body of environmental information and the same interdependent components. The exercise of disaggregation would therefore be circular: the direct effects of Part 1 are the indirect or cumulative effects of Part 2, and vice versa, because they are inseparable parts of the same project. Disaggregation would not change the substance of what must be assessed — it would merely re-label it.

20. The precedents confirm this. In the Net Zero Teesside DCO (2024), which is directly comparable, the generating station was determined under s.104 and the Specified Elements were considered against both s.104 and s.105, notwithstanding that the ES assessed the environmental impacts of the whole Project together without distinguishing between them. Neither the ExA report nor the Secretary of State's Decision Letter contained discrete assessments of the environmental effects of the s.104 and s.105 development. The Secretary of State found that the benefits of the scheme outweighed the harms whether under s.104 or s.105.

21. In the Wheelabrator Kemsley DCO (2021), whilst the ES did separate out the effects of the K3 and WKN projects, that was because the applicant had emphasised that the projects were "separate and distinct" and only included in a single application for the sake of efficiency. That is not the present case, where the NSIP works and commercial and business development are entirely dependent on one another and neither will come forward independently of the other. Critically, the fact that the ES had separated out effects played no part in the High Court's determination that the discrete parts should have been considered under sections 104 and 105 respectively. The words "Environmental Statement" or "EIA" are not mentioned at all in the court's decision.
22. In the Gatwick Airport DCO (2025), the airport works were determined under s.105 and the highway works under s.104. The ES did not separate out the environmental effects of the airport works and the highway works.
23. Prologis has submitted that the *EFW* approach is to be preferred and that the Net Zero Teesside decision and other examples are not "legal precedents" and will be of no assistance if the lawfulness of the decision is tested in the courts. The Applicants accept that prior decisions are not binding legal precedents, but they are instructive examples of how the split approach has been lawfully applied in practice without requiring disaggregation of the ES. Notably, the *EFW* judgment itself did not turn on any question of whether the ES should have been disaggregated; the court's concern was with the correct consenting route, not with the adequacy of the environmental assessment.

Conclusion

24. In summary:

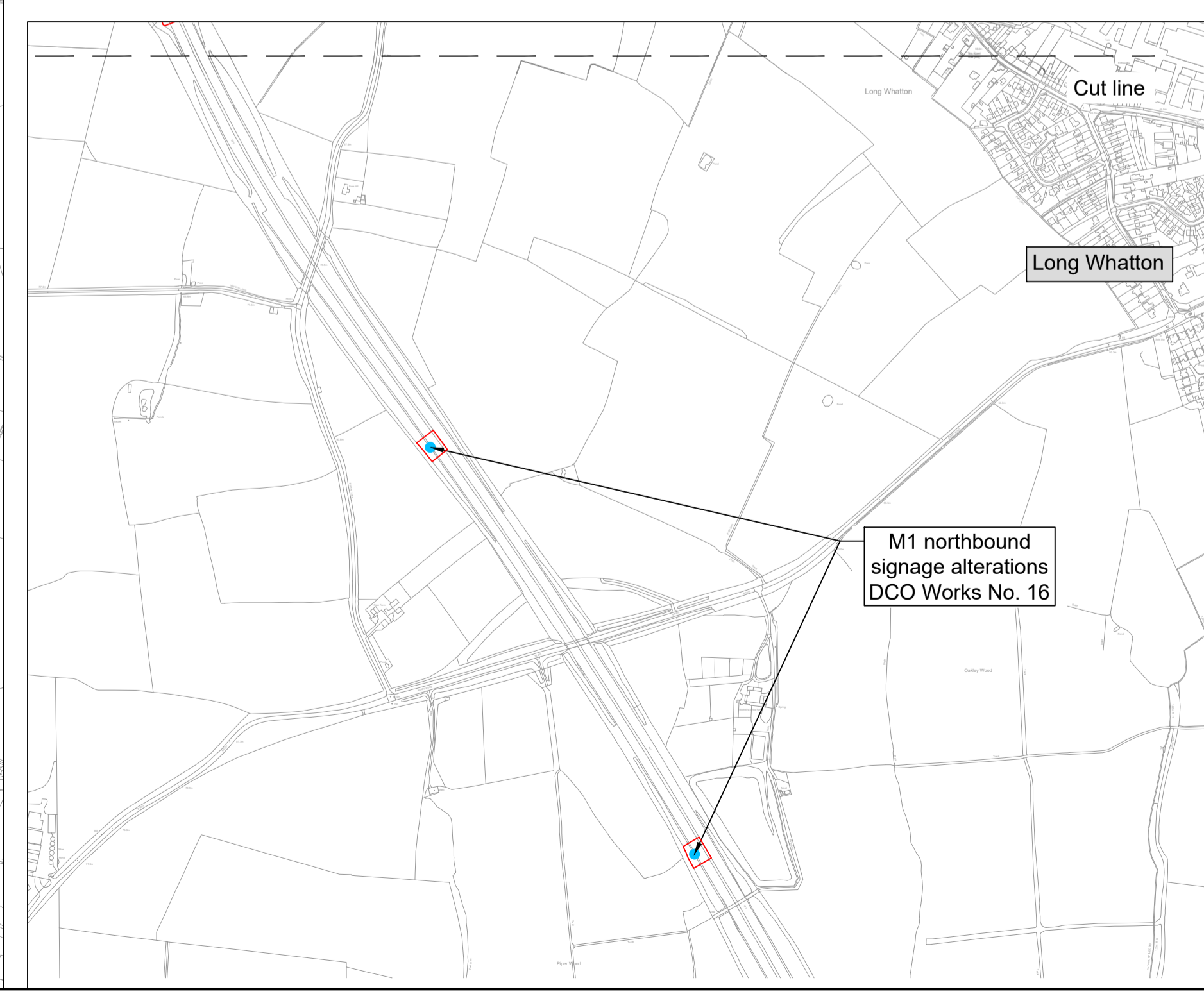
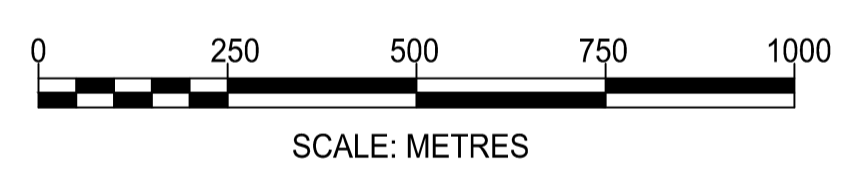
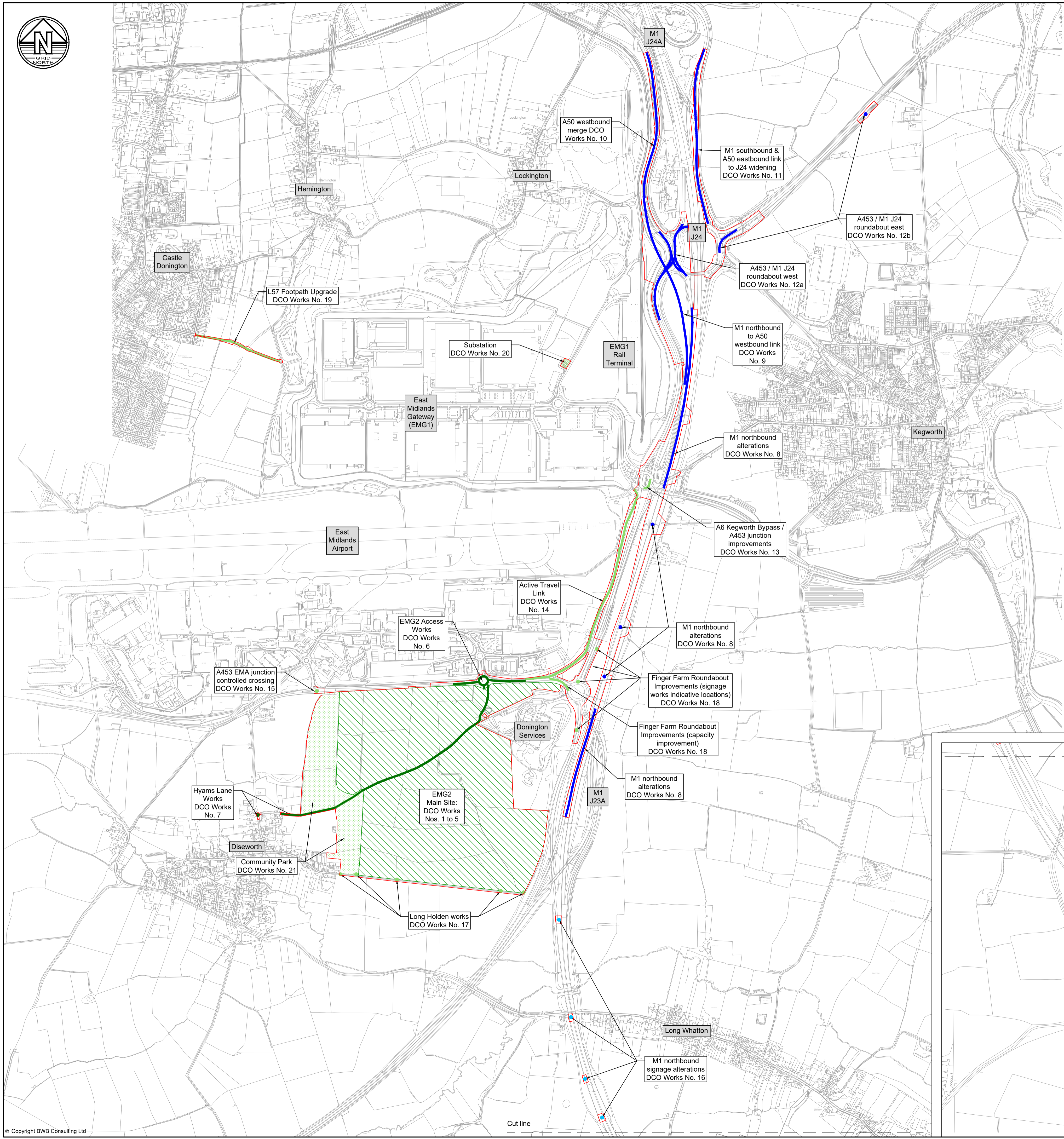
- (a) It is not necessary to separately identify and assess the environmental effects of those parts of the development to be determined under s.104 from those to be determined under s.105, either to comply with the EIA Regulations or to enable reporting and decision-making under the relevant provisions of the PA2008.
- (b) Provided that all environmental effects of the project as a whole are assessed, and the recommendation report makes clear that only for the works for which the NPSNN has effect should it be assumed that need is established and that there is a presumption in their favour, the decision will be appropriately taken under both s.104 and s.105.
- (c) Even if disaggregation were attempted, it would produce the same outcome. The direct effects of Part 1 are the indirect effects of Part 2, and the direct effects of Part 2 are the cumulative effects of Part 1. The EIA framework would require each supposedly discrete assessment to take account of the very elements that have been separated out. Disaggregation would not change the substance of what must be assessed — it would merely re-label it.
- (d) Need for the highways NSIP is established through the NPS. Need for the business and commercial development is established through the Industrial and Logistics Need Assessment [APP-223]. The benefits of both substantially outweigh their adverse impacts, and the planning balance falls decisively in favour of granting development consent for the project as a whole.

Alignment with planning policy

25. The Planning Statement [[REP4-016](#)] includes an overview of all relevant Legislation and Policy in Section 4. The Applicants' appraisal of the proposals against that legislative and policy context is provided in Section 5. Within Section 5, the policy context for the EMG2 Works, comprising the development identified in Part 1 of the draft DCO which would fall to be determined under section 105 of the PA2008, is considered at paragraphs 5.1.5 (page 58) to paragraph 5.1.162 (page 89).
26. Section 5 of the Planning Statement considers the Highway Works, comprising the development identified in Part 2 of the draft DCO which would fall to be determined under section 104 of the PA2008, at paragraph 5.1.163 (page 89) to paragraph 5.1.258 (page 105).
27. For completeness the associated development listed in Part 3 of the draft DCO relates to the EMG2 Works and the business and commercial component of the EMG2 application. The only exception is in respect of Works No.16, which represent minor limited works to signage on the M1 and therefore should be considered as associated development to the Highway Works. In both cases, the policy

consideration that applies to the associated development is unchanged from that reported in Section 5 as set out above.

28. The Applicants consider that the separation, or disaggregation, between the policy assessment for the EMG2 Works and the Highway Works provides the Secretary of State for MCHLG with the relevant policies applicable to the business and commercial component of the EMG2 application for the purposes of decision making. The approach adopted in the Planning Statement should also assist the ExP when incorporating its consideration of policy matters relating to the business and commercial component of the EMG2 application in a discrete part or section of its report pursuant to the request made by the Secretaries of State.



Legend

- DCO order limits
- The s35 business and commercial development:**
 - EMG2 Main Site: Logistics and advanced manufacturing (DCO Works Nos. 1 to 5)
 - Highway Works (DCO Works Nos. 6 and 7)
- Associated development:**
 - Highway Works (DCO Works Nos. 13, 14, 15, 17, 18 and 19)
 - Substation (DCO Works No. 20)
 - Community Park (DCO Works No. 21)
- The s22 Highway NSIP (Alteration of existing highways):**
 - J24 Improvements (DCO Works No. 8, 9, 10, 11 & 12)
- Associated development:**
 - M1 northbound signage (DCO Works No. 16)

P02	22.06.26	Minor amendment to text in legend	SRH	SRH
P01	03.06.26	Issue for information	SRH	SRH
Rev	Date	Details of issue / revision	Drw	Rev

Issues & Revisions

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Client
SEGRO

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East Midlands Gateway 2 (EMG2)

Drawing Title
s35 & HIGHWAY NSIP & ASSOCIATED DEVELOPMENT PLAN

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FOR INFORMATION			
Project - Originator - Zone - Level - Type - Role - Number	Status	Rev	
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